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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,855	12/20/2001	Andrea Susan Wulz	16,897	1818
23556	7590	02/02/2005	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 02/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/026,855	WULZ ET AL.	
	Examiner	Art Unit	
	Karin M. Reichle	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2-27-04 & 11-19-04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-26 and 31-50 is/are pending in the application.
- 4a) Of the above claim(s) 20,22,32,33,38 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-19,21,23-26,31,34-37,39-42 and 44-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 and 19 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| <p>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-28-04</u>.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____</p> |
|---|--|

DETAILED ACTION

Election/Restrictions

1. Applicant's election of the invention of Group II in Paper No. 7 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. The restriction requirement is deemed proper and made FINAL.

3. Applicant's election with traverse of the species of Figure 5 in Paper No. 7 is acknowledged. The traversal is on the ground(s) that 1) the claims listed as generic are inaccurate, 2) the requirement for election is improper because the claims restricted to different species must be mutually exclusive, see MPEP 803.02, and 3) it is not a burden to search all the species. This is not found persuasive because 1) an election requirement is based on the Figures and since the Figures do not show the claimed elements in all the independent claims there are no generic claims, 2) MPEP 803.02 relates to Markush claims which is not relevant to the claims at hand and 3) there are 4 different species which would have to be searched and art considered with regard to and such would be a burden.

The election requirement is still deemed proper and is therefore made FINAL.

4. Claims 20 and 22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

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5. Applicant's election with traverse of the absorbent body being between the surge layer and backsheet, the surge layer being between the topsheet and the absorbent body, there being no vapor barrier and an undulation of not absorbent, breathable, closed cell foam, resilient material in the reply filed on 11-19-04 is acknowledged. The traversal is on the ground(s) that the alleged species are not mutually exclusive, see MPEP 803.02. This is not found persuasive because MPEP 803.02 relates to Markush claims which is not relevant to the claims at hand.

The requirement is still deemed proper and is therefore made FINAL.

6. Claims 32-33, 38, and 43 are also withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 11-19-04.

It is noted that claim 47 is not withdrawn as proposed by Applicant, note claim 40, last section which was not withdrawn by Applicant.

Specification

Drawings

7. The drawings were received on 2-27-04(Figures 1-4) and 11-19-04(Figures 5-7). These drawings are approved by the Examiner except for the remaining issue in the following paragraph.

8. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claim 24,

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e.g. where is the laminate of film and nonwoven shown?, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

9. Claims 17-19, 21, 23-26, 31, 34-37, 39 and 47 are objected to because of the following informalities: in claim 17, section a), “calculated...herein” should be deleted, i.e. implicit due to definition in the definitions section. Appropriate correction is required.

Claim Language Interpretation

10. The directional words are defined as set forth on page 6, lines 15-20 and last six lines. “Liquid” and “liquid communication” are defined as set forth on page 6, lines 21-25. “Multilayer laminate” is defined as set forth on page 7, line 24. “Nonwoven”, “nonwoven” fabric or web, “region”, “area” and “spunbonded fibers” are defined as set forth at page 8. A technique of determining WVTR value is set forth in the paragraph bridging pages 9-10. “Resilient material” is defined as set forth in the paragraph bridging pages 14-15.

Claim Rejections - 35 USC § 103

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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12. Claims 17-19, 21, 23, 26, 31, 34-37, 39-42 and 44-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer '300 in view of Grykiewicz '785.

With regard to claims 17-19, 21, 26, 31, 34-37 and 39: See Figures, col. 4, lines 25-35, i.e. the backsheet is 30, the topsheet is 28, the absorbent body is 32 and the undulation of resilient material is at least a portion of 46, see col. 16, lines 16-18, 33-37, 44-49, col. 17, line 47-col.18, line 42, col. 22, lines 30-38, col. 23, lines 39-50 and col. 19, lines 12-43. With respect to the added section d), see col. 17, lines 64-67, i.e. the surge management layer as claimed is the lower of the two layers and the undulation of resilient material is the upper layer. With regard to the backsheet, see col. 6, line 64-col. 7, line 35, especially lines 29-33, which disclose that the backsheet can be microporous material and certain specific films but does not set forth explicitly the WVTR. However see Gryskiewicz '785 at col. 15, lines 17-38 which, at the very least, teach interchangeability of specific films which are the same as those taught by Sauer for sheets of the claimed WVTR and, at the very most, teach those specific films have the claimed WVTR. Therefore, at the very most, Gryskiewicz teaches the backsheet of Sauer has the claimed WVTR because it has the same films as disclosed by Gryskiewicz which have the claimed WVTR. Alternatively, at the very least, to make the backsheet of Sauer a backsheet of the claimed WVTR instead would be obvious in view of the interchangeability as taught by Gryskiewicz.

With regard to claim 23: See cited portions supra. The term "highly breathable" is considered relative and thus, the backsheet of Sauer and Gryskiewicz is considered "highly breathable".

With regard to claims 40-42 and 44-50: see the discussion of the claims supra. With regard to the claim terminology "does not readily absorb" such terminology is considered

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relative. See again col. 15, lines 53-63 and col. 16, lines 8-12 of Sauer (note “may” also includes “may not”). “Hydrophilic” as defined by the dictionary is “Having an affinity for absorbing, wetting smoothly with, tending to combine with or capable of dissolving in water” whereas “Hydrophobic” is defined as “Antagonistic to, shedding, tending not to combine with or incapable of dissolving in water”, i.e. not readily absorbent. Also note the paragraph bridging cols. 16-17 of Sauer. Therefore, the at least a portion of 46 is considered to “not readily absorb fluids”.

13. Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer and Gryskiewicz as applied to claim 23 above, and further in view of Odorzynski et al ‘341.

Applicant claims the backsheet of a film/spunbond nonwoven laminate whereas Sauer and Gryskiewicz teach a film or coated or treated nonwoven. However see Odorzynski ‘341 at col. 6, line 47-col. 7, line 18, i.e. interchangeability of films or treated nonwovens with film/spunbond nonwoven laminates. To make the backsheet of Sauer a film/spunbond nonwoven laminate instead would be obvious in view of the interchangeability as taught by Odorzynski et al.

Response to Arguments

14. Applicant’s remarks of 2-27-04 on pages 10 et seq have been considered but are deemed not persuasive because such are narrower than the claim language and the teachings of the prior art, i.e. see the prior art rejection supra with regard to the surge management layer and undulation and note that there is no claim language which precludes the undulation and surge management layers from reading on the upper and lower layers of 46 and that the layers may be

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hydrophobic. Furthermore, col. 19, lines 12-43 clearly disclose the claimed direction of liquid movement.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any new grounds of rejection were necessitated by the amendment to claim 17 and the addition of the new claims.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
January 31, 2005